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**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

CONNIE A. CARDINALE, an individual,

**Plaintiff.**

VS.

XAVIER BECERRA, an individual sued in his official capacity only; SCOTT R. JONES, an individual sued in his official and individual capacities; COUNTY OF SACRAMENTO, a governmental entity; SACRAMENTO COUNTY SHERIFF'S DEPARTMENT, a public entity; CLINTON ROBINSON (#305), an individual sued in his official and individual capacities; and Does 1 through 20, all sued in their individual capacities,

## Defendants.

Case No. 2:20-cv-1325-MCE-CKD

**PLAINTIFF'S NOTICE OF  
MOTION AND MOTION FOR  
PARTIAL SUMMARY  
JUDGMENT;  
MEMORANDUM OF POINTS  
AND AUTHORITIES**

Date: Thursday, 7/13/23

Time: 10:00 a.m.

Ctrm: 7

TO THE HON. MORRISON C. ENGLAND, JR., SENIOR UNITED STATES  
DISTRICT JUDGE, DEFENDANTS AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT on Thursday, July 13, 2023, at 10:00 a.m., or as soon thereafter as the parties may be heard in Courtroom 7 of the Robert T. Matsui United States Courthouse, located at 501 I Street, Sacramento, California, Plaintiff will move the Court for an order granting partial summary judgment as follows:

1       1. No triable issue of material fact exists with respect to Plaintiff's claim that the  
2 December 25, 2019 seizure of Plaintiff's long guns violated the Second and Fourth  
3 Amendments in that the seizure violated both Amendments;

4       2. No triable issue of material fact exists with respect to Plaintiff's claim that the  
5 warrant which issued December 26, 2019 (Exhibit F to ECF 45-2) violated the Fourth  
6 Amendment in that:

7              A. The warrant was overbroad in its authorization to search "any vehicle"  
8 on the premises;

9              B. The warrant was overbroad in its authorization to search for and seize all  
10 "Items related to firearms" (item no. 2);

11              C. The warrant was overbroad in its authorization to search for and seize all  
12 "Any and all financial documents tending to establish if the motive for the  
13 attempted homicide was for financial gain" (item no. 4);

14              D. The warrant was overbroad in its authorization to search for and seize  
15 "Items of personal property tending to establish the identity of persons in control  
16 of the premises" (item no. 6);

17              E. The warrant was overbroad in its authorization to search for and seize  
18 "Telephone directories, address books, calendars and documents with names and  
19 addresses" (item no. 7);

20              F. The warrant was overbroad in its authorization to search for and seize  
21 "Digital storage devices" (item no. 8);

22              G. The warrant was overbroad in its authorization to search for and seize  
23 "Wireless electronic devices / cellular telephone and cellular telephone  
24 accessories" (item no. 9);

25              H. The warrant was overbroad in its authorization to search for and seize  
26 "Any and all locked safes, locked boxes, chests, etc., which could contain evidence  
27 related to the shooting" (item no. 10); and

28              I. The warrant was overbroad in its authorization to search for and seize

“Any and all illegal narcotics and prescription narcotics within the confines of the residence” (item no. 11).

3. No triable issue of material fact exists with respect to Plaintiff's claim that the December 26, 2019 seizure of Plaintiff's two handguns locked in her safe, violated the Second and Fourth Amendments in that the seizure violated both Amendments;

4. No triable issue of material fact exists with respect to Plaintiffs' claim that the County of Sacramento and Sacramento County Sheriff's Department's refusal, beginning in March 2020 and continuing up until June 22, 2021, to release to Plaintiff her firearms seized December 25 and 26, 2019, in that as a matter of law the refusal violated both the Second and Fourth Amendment;

5. The above described constitutional violations were pursuant to a custom, policy and/or practice of the County of Sacramento and Sacramento County Sheriff's Department; and

6. Defendants County of Sacramento and Sacramento County Sheriff's Department are liable as a matter of law for all damages proximately caused by the above-described constitutional violations.

This motion will be pursuant to Rule 56(a), Federal Rules of Civil Procedure, and based upon this Notice, the accompanying Memorandum of Points and Authorities, the separately filed “Plaintiff’s Separate Statement of Undisputed Facts” (ECF 45-1), “Declaration of Donald W. Cook in Support of Plaintiff’s Motion for Partial Summary Judgment” and Exhibits thereto (ECF 45-2), the papers and pleadings on file on this action, and upon such other and further evidence and argument as the Court deems necessary or convenient.

DATED: June 2, 2022

**DONALD W. COOK**  
Attorney for Plaintiff

By Donald Cook  
Donald W. Cook

1 TABLE OF CONTENTS  
2

	Page
3 Table of Authorities .....	5
4 I. Overview and Relief Requested.....	8
5 II. Undisputed Facts. ....	9
6     A. Christmas Day. ....	9
7     B. The Day After Christmas.....	10
8     C. Subsequent Events And Defendants' Refusal To Release The Firearms. .	12
9 III. The December 25 Seizure Of Plaintiff's Long Guns Violated The Second and	
10     Fourth Amendments. ....	13
11 IV. The December 26 Warrant Was Overbroad In Violation Of	
12     The Fourth Amendment. ....	14
13         A. Overbreadth - The Legal Standard. ....	14
14         B. The Warrant Was Overbroad. ....	15
15 V. Defendants' Refusal For Over A Year To Return To Plaintiff Her Firearms	
16     Violated Both The Second And Fourth Amendments. ....	17
17 VI. The Entity Defendants Are Liable For The Constitutional Violations. ....	20
18 VII. Defendants Are Liable For All Damages Proximately Caused By Their	
19     Constitutional Violations. ....	21
20 VIII. Conclusion. ....	21
21	
22	
23	
24	
25	
26	
27	
28	

## Table of Authorities

	Page(s)
<b>Cases</b>	
<i>Bravo v. City of Santa Maria,</i> 665 F.3d 1076 (9th Cir. 2011) .....	21
<i>Brewster v. Beck,</i> 859 F.3d 1194 (9 <sup>th</sup> Cir. 2017) .....	18
<i>Caniglia v. Strom,</i> ____ U.S. ___, 141 S.Ct. 1596 (2021) .....	14
<i>Chew v. Gates,</i> 27 F.3d 1432 (9 <sup>th</sup> Cir. 1994) .....	20
<i>City of Los Angeles v. Patel,</i> 576 U.S. 409 (2015) .....	13
<i>District of Columbia v. Heller,</i> 554 U.S. 570 (2008) .....	13, 19
<i>Estate of Millender v. County of Los Angeles,</i> 2012 WL 3655515 (C.D. Cal. 2012) .....	15
<i>Fairley v. Luman,</i> 281 F.3d 913 (9 <sup>th</sup> Cir. 2002) .....	21
<i>Frein v. Pennsylvania State Police,</i> 47 F.4th 247 (3 <sup>rd</sup> Cir. 2022) .....	20
<i>Illinois v. Andreas,</i> 463 U.S. 765 (1983) .....	16
<i>In re Grand Jury Subpoenas Dated Dec. 10, 1987,</i> 926 F.2d 847 (9 <sup>th</sup> Cir. 1991) .....	14
<i>Jackson v. Gates,</i> 975 F.2d 648 (9th Cir. 1992) .....	20
<i>Lee v. City of Los Angeles,</i> 250 F.3d 668 (9 <sup>th</sup> Cir. 2001) .....	20
<i>McDonald v. City of Chicago,</i> 561 U.S. 742 (2010) .....	13, 19
<i>Messerschmidt v. Millender,</i> 565 U.S. 535 (2012) .....	15, 17

1	<i>Millender v. County of Los Angeles,</i> 620 F.3d 1016 (9th Cir. 2010) ( <i>en banc</i> ) .....	15
2	<i>Miranda v. City of Cornelius,</i> 429 F.3d 858 (9th Cir. 2005) .....	18
4	<i>Monell v. New York Dept. Of Soc. Servs.,</i> 436 U.S. 658 (1978) .....	20
6	<i>New York State Rifle &amp; Pistol Ass'n, Inc. v. Bruen,</i> ____ U.S. ___, 142 S.Ct. 2111 (2022) .....	19, 20
7	<i>Oviatt v. Pearce,</i> 954 F.2d 1470 (9th Cir. 1992) .....	20
9	<i>Snitko v. United States,</i> 2021 WL 3139706 (C.D. Cal. 2021) .....	20
11	<i>United States v. Cervantes,</i> 703 F.3d 1135 (9 <sup>th</sup> Cir. 2012) .....	19
13	<i>United States v. Hawkins,</i> 249 F.3d 867 (9th Cir. 2001) .....	13
15	<i>United States v. Spilotro,</i> 800 F.2d 959 (9 <sup>th</sup> Cir. 1991) .....	14
16	<i>United States v. Sutton,</i> 794 F.2d 1415 (9th Cir. 1986) .....	16
17		
18	<b><i>Constitution / Statutes / Rules of Court</i></b>	
19	Cal. Evid. Code § 637 .....	19
20	Cal. Evid. Code § 638 .....	19
21	Cal. Pen. Code § 148 .....	12
22	Cal. Pen. Code § 245 .....	12
23	Cal. Pen. Code § 29800 .....	12
24	Cal. Pen. Code § 33850 .....	18
25	Cal. Pen. Code § 33865 .....	18
26	Cal. Pen. Code § 368 .....	12
28	Federal Rules of Civil Procedure 56 .....	3, 8

1	Title 42, United States Code § 1983 .....	8, 20, 21
2	U.S. Const., Amend. II .....	2, 3, 8, 13, 17, 19, 20
3	U.S. Const., Amend. IV .....	2, 3, 8, 14, 15, 17
4	U.S. Const., Art. VI .....	18
5		

6 ***Other Authorities***

7	RESTATEMENT (SECOND) OF TORTS) .....	21
8		

9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
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1           **I. Overview and Relief Requested.**

2           In this lawsuit under 42 U.S.C. § 1983, Plaintiff Connie Cardinale sues the County  
3 of Sacramento (“County”), the Sacramento County Sheriff’s Department (“SCSD”),  
4 Sacramento County Sheriff Scott R. Jones (“Jones”), and Sacramento County Deputy  
5 Clinton Robinson (“Robinson”). Plaintiff alleges violations of her Second, Fourth, and  
6 Fourteenth Amendment rights. By this motion Plaintiff seeks partial summary judgment  
7 that defendants are liable under § 1983 for the violations of Plaintiff’s Second and Fourth  
8 Amendment rights. F.R.Cv.P. 56(a).

9           This incident arises from SCSD deputies responding to Ms. Cardinale’s home to  
10 assist her, after her adult son Ryan Stucky had assaulted and battered her on Christmas  
11 Day 2019. Before the deputies arrived, Ryan Stucky had fled his mother’s home, taking  
12 with him Ms. Cardinale’s Smith & Wesson revolver. Upon the deputies’ search of her  
13 home that evening, without a warrant SCSD deputies seized Ms. Cardinale’s four  
14 lawfully-owned long guns from her bedroom closet, stating they seized the firearms for  
15 safekeeping. The following day, SCSD obtained a search warrant for Ms. Cardinale’s  
16 home, enabling deputies to conduct a destructive and intrusive search for virtually  
17 anything in every structure and vehicle on Plaintiff’s residential lot despite the clear  
18 absence of any connection to the underlying criminal investigation. Pursuant to the  
19 overbroad warrant, deputies seized Ms. Cardinale’s two remaining handguns locked in  
20 a safe – firearms the deputies knew had no connection to any crime the deputies were  
21 investigating. Except for the Smith & Wesson revolver Ryan Stucky took on December  
22 25, none of the firearms were contraband or evidence of crime; each firearm was lawfully  
23 owned and possessed by Ms. Cardinale. Despite this and even after the conclusion of Ms.  
24 Cardinale’s son’s criminal case, defendants refused to return her firearms for nearly a year  
25 and half.

26           Defendants have taken the position that everything they did was both appropriate  
27 and in accordance with the County and SCSD’s policies and practices.

28           By this motion Plaintiff seeks summary adjudication that (a) the seizure without

1 a warrant of her long guns on December 25 violated the Second and Fourth Amendments;  
2 (b) the warrant issued December 26 was overbroad in violation of the Fourth  
3 Amendment; (c) defendants' refusal to return to Plaintiff her firearms for nearly 18  
4 months, violated both the Second and Fourth Amendments; (d) the aforementioned  
5 violations were in accordance with the custom, policy and/or practice of the County of  
6 Sacramento; and (e) Plaintiff is entitled to recover compensatory damages from  
7 defendants County and SCSD for all injuries proximately caused by defendants'  
8 constitutional violations.

9 **II. Undisputed Facts.**

10 **A. Christmas Day.**

11 On Christmas Day 2019, Plaintiff Connie Cardinale, 66 years of age, invited her  
12 adult son, Ryan Stucky (age 29) into her home for a holiday dinner. Stucky suffers from  
13 schizophrenia and, unfortunately unknown to Plaintiff, had not been taking his required  
14 medication. Stucky began arguing with his mother. Without warning, he suddenly became  
15 violent. Using his hands and feet and then a wooden dowel, he struck and hit Ms.  
16 Cardinale repeatedly, seriously injuring her. Ms. Cardinale fled into her bedroom's  
17 bathroom, locked and barricaded the door. She managed to get text messages to friends  
18 seeking help. In turn, her friends called 911. Meanwhile, Ryan Stucky fled, taking with  
19 him his mother's .38 caliber Smith & Wesson revolver she had kept under her bed's  
20 pillow (but which had been exposed during the course of the assault inside her bedroom).  
21 Plaintiff's Undisputed Material Fact ("PUMF") 1.

22 SCSD deputies responded. After summoning medical aid for Ms. Cardinale, the  
23 deputies searched her home. Without a warrant deputies entered Ms. Cardinale's bedroom  
24 walk-in closet and seized her lawfully acquired and owned long guns (three rifles / one  
25 shotgun): (1) Remington 870 Pump .20-caliber Shotgun, serial number RS50085H; (2)  
26 Savage 99E Bolt Action 243-caliber Rifle, serial number 1111846; (3) Ruger 10-22 Semi-  
27 Automatic .22-caliber Rifle, serial number 35754232; and (4) Winchester 270 22-caliber  
28 rifle. PUMF 2, 4.

1           The deputies took the firearms “for safe keeping at the North Area Station”; the  
2           deputies did not claim they seized the long guns as evidence of any type. PUMF 3, 69.  
3           The deputies seized the long guns without a warrant or consent. PUMF 5.

4           **B. The Day After Christmas.**

5           The following day (December 26), deputies returned to Ms. Cardinale’s residence.  
6           The deputies found Ryan Stucky hiding inside a separate structure, a barn on the  
7           property’s south side. Not later than 4:00 p.m. that day, deputies took Ryan Stucky into  
8           custody. After arresting Ryan Stucky, the deputies found inside the barn the .38 caliber  
9           Smith & Wesson revolver Stucky took the day before. PUMF 6-8.

10          *After* Ryan Stucky’s December 26 arrest and sometime between 6 to 6:30 p.m. on  
11          December 26, defendant Clinton Robinson, a Sacramento County Sheriff’s Deputy,  
12          electronically submitted a search warrant application to the Sacramento Superior Court.  
13          PUMF 9. Other than preparing the warrant application and submitting it to the superior  
14          court, Robinson had no involvement in the incident; he never went to the scene,  
15          interviewed no one and made no observations of any type. For his information, Robinson  
16          relied solely on what other deputies told him, information acquired via queries into law  
17          enforcement databases, and what he learned from reading the SCSD CAD dispatch log.  
18          PUMF 10. The warrant application, **Exhibit F** to ECF 45-2 (at pp. 39-52) consisted of 14  
19          pages and did not include any police reports. PUMF 11.

20          Besides seeking authorization for seizing evidence regarding the December 25  
21          assault on Ms. Cardinale, the warrant application sought authorization to search *all*  
22          structures on Ms. Cardinale’s lot and *all* vehicles for, among other items,

- 23           ● *all* firearms and firearms-related items (item #2);
- 24           ● “Any and all financial documents tending to establish if the motive for the  
25           attempted homicide was for financial gain” (item #4);
- 26           ● personal property items “tending to establish the identity of the persons  
27           in control of the premises” (such as utility and/or rent receipts, addressed  
28           envelopes; vehicle registration, keys etc.) (item #6). PUMF 36.

1           ● “Telephone directories, address books, calendars and documents with  
2 names and addresses tending to establish the identity of friends, associates and  
3 family members of the persons in control of the premises” (item #7). PUMF 39.

4           ● All electronic devices of any type (e.g., computers, smart phones,  
5 cameras) along with related storage media (CDs, DVDs, hard or floppy disks etc.),  
6 related literature, repair and purchase receipts, as well as authorization “to conduct  
7 a detailed search of the electronic contents of these digital storage devices through  
8 means of forensic examination” (item #8). PUMF 40.

9           ● “Wireless electronic devices / cellular telephones and cellular telephone  
10 accessories including, but not limited to, SIM cards, and electrical cords for  
11 charging phones. Wireless / cellular telephones to include SIM cards, flash  
12 memory, and memory chips for each telephone” (item #9). PUMF 41.

13           ● “Any and all locked safes, locked boxes, chests, etc., which could contain  
14 evidence related to the shooting” (item #10); and

15           ● “Any and all illegal narcotics and prescription narcotics within the  
16 confines of the residence” (item #11). PUMF 34.

17           When Robinson submitted the warrant application, Robinson and/or his fellow  
18 deputies knew the following facts were true:

19           ● Contrary to what he claimed in his affidavit, PUMF 12, Det. Robinson did  
20 not “personally observe[]” Ms. Cardinale’s residence and made *no* “personal  
21 observations” regarding this incident. PUMF 10.

22           ● The only crimes at issue arose from Ryan Stucky physically assaulting his  
23 mother Plaintiff Connie Cardinale, battering her by hitting and kicking her, and  
24 striking her with a wooden dowel. PUMF 13-14. When he assaulted his mother,  
25 Stucky did not have in his possession a firearm; at no time did he threaten his  
26 mother or anyone else with a firearm. PUMF 15, 18. And contrary to what he  
27 stated in his affidavit, PUMF 16, Robinson knew there was no shooting. PUMF 17.

28           ● Deputies had already arrested Ryan Stucky *and* had recovered the .38

1 Smith & Wesson revolver Stucky took when he fled his mother's home the day  
2 before. PUMF 31.

3 • There was no evidence suggesting drug-related crimes, *i.e.*, possessing,  
4 manufacturing and/or selling illegal drugs. PUMF 33. The only firearm related  
5 crime occurred after the assault when Stucky, previously convicted of a felony, fled  
6 his mother's home taking with him his mother's .38 caliber Smith & Wesson  
7 revolver she had kept under her bed's pillow. PUMF 15, 18.

8 • Stucky's assault on his mother did not arise from an home invasion  
9 robbery or anything similar; Stucky was in his mother's home for a Christmas  
10 dinner for just the two of them, which because of Stucky's severe mental health  
11 issues resulted in the assault and battery, *i.e.*, an incident of domestic violence (as  
12 Robinson admitted). PUMF 25-26, 33.

13 • Stucky assaulted his mother inside *her* home where she and only she  
14 resided, *i.e.*, Stucky did not live there. Moreover, Plaintiff was the sole witness to  
15 her son's crimes, was her home's only owner of record and the only person with  
16 control of the residence. PUMF 2, 35. Hence, Robinson and the other deputies  
17 already knew that Ms. Cardinale and only Ms. Cardinale had ownership and  
18 control of the premises.

### 19 **C. Subsequent Events And Defendants' Refusal To Release The Firearms.**

20 Following his December 26 arrest, Ryan Stucky was charged with violating Cal.  
21 Penal Code §§ 245(a)(4) (assault with deadly weapon other than a firearm), 368(b)(1)  
22 (infliction of serious harm on an elder), 29800(a)(1) (felon in possession of firearm) and  
23 148(A)(1) (resisting / delaying a police officer). PUMF 61. On February 26, 2020, he pled  
24 no contest to the § 245(a)(4) charge, while the other charges were dismissed. He was  
25 sentenced to a four year state prison term. PUMF 62. As of this writing, he is still in  
26 custody.

27 The day of Ryan Stucky's sentencing (2/26/20) the Sacramento district attorney's  
28 office (the prosecutor) notified SCSD to release Ms. Cardinale's property held in

1 connection with the criminal case. PUMF 64.

2 Beginning in March 2020, Ms. Cardinale, first by herself then through requests  
3 made by her attorney, made repeated requests on the SCSD and California Bureau of  
4 Firearms for the return of her firearms; the SCSD and Bureau rejected all requests unless  
5 and until Ms. Cardinale complied with state law authorizing return of firearms lawfully  
6 acquired and owned even where the firearms were wrongly seized by law enforcement.  
7 In connection with that demand, the Bureau of Firearms made a further demand Ms.  
8 Cardinale present proof that her one-time married surname of “Stucky,” was in fact a  
9 surname she used over 25 years ago when she was married, and even though the Bureau  
10 already had official confirmation that Ms. Cardinale had used “Stucky” as her married  
11 name many years ago. PUMF 65-68 & 71; *see also* ECF 45-2 @ pp. 128-30 (Exhibit L -  
12 6/12/20 letter to defendants and the Bureau of Firearms).

13 Defendants finally returned Plaintiff’s firearms to her on June 22, 2021. PUMF 71.

14 **III. The December 25 Seizure Of Plaintiff’s Long Guns Violated The Second and  
15 Fourth Amendments.**

16 The Second Amendment guaranteed Plaintiff the right to possess in her home the  
17 lawfully acquired long guns she kept in her closet as the long guns were neither  
18 contraband nor evidence of crime. PUMF 3-4, 69; *District of Columbia v. Heller*, 554  
19 U.S. 570, 592-95 (2008); *McDonald v. City of Chicago*, 561 U.S. 742, 778 (2010).  
20 Additionally, since the December 25 seizure of the long guns was without a warrant or  
21 consent, PUMF 5, the seizure was presumptively unconstitutional. *City of Los Angeles  
22 v. Patel*, 576 U.S. 409, 419 (2015); *United States v. Hawkins*, 249 F.3d 867, 872 (9th Cir.  
23 2001) (Property seizure without a warrant is “per se unreasonable” with “burden on [the  
24 government] to persuade the district court that [the] seizure comes ‘under one of a few  
25 specifically established exceptions to the warrant requirement.’ ”).

26 Defendants cannot justify the December 25 warrantless seizures. The deputies  
27 make no claim that the rifles were contraband or evidence of crime; instead, the deputies  
28 state they took the rifles “for safe keeping.” PUMF 3, 69. Hence, seizing Ms. Cardinale’s

long guns was unconstitutional. *Caniglia v. Strom*, \_\_\_ U.S. \_\_\_, 141 S.Ct. 1596, 1599-00 (2021) (Without a warrant police seize homeowner's firearms after taking homeowner into custody "for a psychiatric evaluation." Lower courts justified the seizures under the Fourth Amendment's "community caretaking" exception to the warrant requirement; Supreme Court reverses, holding that the community caretaking exception cannot justify seizing firearms without consent and where the firearms were not evidence of crime or contraband).

#### IV. The December 26 Warrant Was Overbroad In Violation Of The Fourth Amendment.

##### A. Overbreadth - The Legal Standard.

Overbreadth "deals with the requirement that the scope of the warrant be limited by the probable cause on which the warrant is based." *In re Grand Jury Subpoenas Dated Dec. 10, 1987*, 926 F.2d 847, 856-57 (9<sup>th</sup> Cir. 1991). To determine if a warrant was overbroad, a court analyzes the following:

(1) whether probable cause exists to seize all items of a particular type described in the warrant; (2) whether the warrant sets out objective standards by which executing officers can differentiate items subject to seizure from those which are not; and (3) whether the government was able to describe the items more particularly in light of the information available to it at the time the warrant was issued.

*United States v. Spilotro*, 800 F.2d 959, 963 (9<sup>th</sup> Cir. 1991) (Opinion by then-Circuit Judge Anthony Kennedy).

Explaining the *Spilotro* test, *en banc* the Ninth Circuit further held:

The first consideration encapsulates the overarching Fourth Amendment principle that police must have probable cause to search for and seize "all the items of a particular type described in the warrant." *In re Grand Jury Subpoenas*, 926 F.2d at 857; *see also SDI Future Health*, 568 F.3d at 702-03; *VonderAhe v. Howland*, 508 F.2d 364, 369-70 (9th

1 Cir.1974). The second and third factors are relevant to determining whether  
2 the warrant satisfies this general rule.

3 *Millender v. County of Los Angeles*, 620 F.3d 1016, 1024 (9th Cir. 2010) (*en banc*)  
4 overruled on oth. grds. sub. nom., *Messerschmidt v. Millender*, 565 U.S. 535 (2012).<sup>1</sup>

5 Thus, though there be probable cause to search for and seize *some* items (as existed  
6 in this case<sup>2</sup>) and even though a judge signed off on a warrant application thereby issuing  
7 the warrant, those factors do not insulate the warrant from constitutional review.  
8 *Millender*, 620 F.3d at 1025-27 (Warrant authorizing seizure of *all* firearms when police  
9 knew that the only firearm involved in crime was a “ ‘black sawed off shotgun with a  
10 pistol grip,’ ” was overbroad in violation of the Fourth Amendment.).

11 **B. The Warrant Was Overbroad.**

12 Deputy Robinson, the warrant’s affiant, had no first hand knowledge of the

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13       <sup>1</sup> In *Messerschmidt*, the Supreme Court held that the deputy who swore out the  
14 affidavit seeking seizure of all firearms, had qualified immunity on the *second* prong: law  
15 not clearly established as of the search date (November 4, 2003).

16       Should defendants argue the Supreme Court’s *Messerschmidt* opinion rejected the  
17 Ninth Circuit’s *en banc* holding that the warrant there was overbroad, the argument is  
18 meritless. As District Judge Dean Pregerson (the *Millender* trial judge) stated in a post-  
19 *Messerschmidt* ruling: “The Supreme Court did not reverse the holding by this court and  
20 the Ninth Circuit that the warrant was overbroad.” *Estate of Millender v. County of Los  
21 Angeles*, 2012 WL 3655515, \*2 (C.D. Cal. 2012) (filed 8/24/2012). “This distinction  
22 between the constitutional violation and qualified immunity for the officers is *critical*,  
23 because the Court’s decision has already been cited incorrectly by the government in  
24 cases before this court, including this case. (See Defs.’ Opp’n to MSA Mot. at 6 (“[T]he  
25 Supreme Court implicitly found there was probable cause for the issuance of the  
warrant....’). Again, the Supreme Court [in *Messerschmidt*] held *only* that the officers  
were entitled to qualified immunity. Thus, the Ninth Circuit’s en banc holding that the  
warrant was unconstitutionally overbroad remains the law.” 2012 WL 3655515 at \*2  
(emphasis in original).

26       <sup>2</sup> Plaintiff does not dispute that there was probable cause to search for and seize the  
27 wooden dowel Stucky used to assault his mother and other physical evidence connected  
28 to the assault. There was also probable cause to seize the .38 caliber Smith & Wesson  
revolver.

1 underlying incidents but instead relied on what fellow deputies told him or reported  
2 (PUMF 10); hence, the collective knowledge doctrine applies. *Illinois v. Andreas*, 463  
3 U.S. 765, 771 n.5 (1983) (“The Illinois Court held that Labek’s absence when the  
4 container was resealed by customs officers somehow made less than certain his  
5 knowledge of the container’s contents. This was plain error: where law enforcement  
6 authorities are cooperating in an investigation, as here, the knowledge of one is presumed  
7 shared by all.”); *United States v. Sutton*, 794 F.2d 1415, 1426 (9th Cir.1986) (“We look  
8 to the collective knowledge of all the officers involved in the criminal investigation  
9 although all of the information known to the law enforcement officers involved in the  
10 investigation is not communicated to the officer who actually makes the stop.”).

11 Here, the deputies sought a warrant to search Ms. Cardinale’s home and adjoining  
12 structures as if her residence was the scene of a “homicide” following a “shooting”  
13 involving “firearms” and which arose from or was connected to drug-related criminal  
14 activities (sales / manufacturing / distribution) at Ms. Cardinale’s residence where  
15 ownership and control of the premises would be relevant. PUMF 16, 34, 49. In fact, the  
16 deputies knew (a) no firearms or other weapon of any type was used in the assault on Ms.  
17 Cardinale other than a wooden dowel; (b) Stucky was the only suspect, he acted alone,  
18 had no accomplices and was likely motivated by his mental illness (schizophrenia); (c)  
19 there was no evidence or suspicion of any illegal drug activity of any type at Ms.  
20 Cardinale’s residence; (d) Ms. Cardinale was the lawful owner of firearms that had no  
21 connection of any type to Stucky’s assault on his mother; (e) the only firearm-related  
22 offense was Stucky taking, upon fleeing his mother’s house, a specifically identified (by  
23 make, model and serial number) handgun lawfully owned by Ms. Cardinale, thus giving  
24 rise to crimes of possible theft and felon in possession of a firearm; and (f) deputies  
25 recovered that handgun *before* Robinson submitted his warrant application to the superior  
26 court. PUMF 14, 15, 20, 31, 33, 35.

27 Thus, the SCSD deputies had no “probable cause to search for and seize ‘all the  
28 items of a particular type described in the warrant,’ ” to wit item #2 (all firearms and

1 firearms related items); item #4 (“Any and all financial documents etc. tending to  
2 establish if the motive for the attempted homicide was for financial gain”); item #6  
3 (Personal property items “tending to establish the identity of the persons in control of the  
4 premises”); #7 (“Telephone directories, address books, calendars and documents with  
5 names and addresses” etc.); #8 and #9 (Electronic devices of any type such as computers,  
6 smart phones, cameras along with related storage media etc.); #10 (safes, locked boxes,  
7 chests, etc. “which could contain evidence related *to the shooting*”); and #11 (“Any and  
8 all illegal narcotics and prescription narcotics within the confines of the residence.”).

9 Furthermore – and putting aside that the deputies had already retrieved, when  
10 Robinson submitted the warrant application, the Smith & Wesson revolver Stucky took  
11 the day before (PUMF 31) – on item #2 (firearms) there was only probable cause for  
12 seizing one specifically described firearm – the revolver Stucky took December 25 and  
13 which *on that same day* the deputies knew was “a .38 caliber Smith & Wesson 642 (serial  
14 #CPR8043).” PUMF 20. Thus, by obtaining a warrant for seizing *all* firearms and related  
15 items when the deputies had identified by make, model and serial number the only firearm  
16 connected to an underlying crime, the deputies violated the Fourth Amendment.  
17 *Millender v. County of Los Angeles*, 620 F.3d at 1025-27 (Warrant authorizing seizure  
18 of *all* firearms when police knew that the only firearm involved in the underlying crime  
19 was a “ ‘black sawed off shotgun with a pistol grip,’ ” violated the Fourth  
20 Amendment.<sup>3</sup>).

21 **V. Defendants’ Refusal For Over A Year To Return To Plaintiff Her Firearms  
22 Violated Both The Second And Fourth Amendments.**

23 Of Plaintiffs’ seven firearms the deputies seized (four rifles and three handguns)  
24 only one – the .38 caliber Smith & Wesson revolver Stucky took on December 25 – had  
25 relevance to Stucky’s criminal prosecution. PUMF 15, 69. And that relevance ended

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27       <sup>3</sup> As previously stated, the Supreme Court’s later ruling in *Millender* did not  
28 overturn the Ninth Circuit’s *en banc* ruling that the warrant was overbroad in authorizing  
the seizure of all firearms. *See supra* fn. 1.

1 February 26, 2020, when the prosecutor directed the SCSD to release the revolver (along  
2 with other property items). PUMF 63.

3 Beginning in March 2020 and continuing well into 2021, defendants refused to  
4 return to Plaintiff her firearms despite Plaintiff's and her attorney's repeated requests to  
5 do so. PUMF 65-68. Defendants demanded that Plaintiff first comply with Cal. Penal  
6 Code § 33850 and obtain written authorization from California's Bureau of Firearms, see  
7 Cal. Pen. Code § 33865. PUMF 70. Essentially, these statutes state that a law enforcement  
8 agency that seizes a firearm maintain possession until its owner presents proof to the  
9 Bureau of Firearms she is the firearm's owner, is lawfully entitled to possess the firearm,  
10 and obtains the Bureau's written authorization for the firearm's release.<sup>4</sup>

11 Defendants' reliance on state law in refusing to promptly return to Ms. Cardinale  
12 her firearms, was meritless. First because state law cannot, in and of itself, justify a  
13 property seizure not otherwise in compliance with the federal Constitution. U.S. Const.,  
14 Art. VI (Supremacy Clause); *Brewster v. Beck*, 859 F.3d 1194, 1196-97 (9<sup>th</sup> Cir. 2017)  
15 (Reliance on state law that mandated a 30 day impound of the plaintiff's vehicle did not  
16 equate to constitutional justification for the ongoing property seizure); *Miranda v. City*  
17 *of Cornelius*, 429 F.3d 858, 864-65 (9th Cir. 2005) ("city ordinance and state statute does  
18 not, in and of itself, determine the reasonableness of the seizure under the Fourth  
19 Amendment").

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21       <sup>4</sup> In relevant part subdivision (a) of § 33850 states "Any person who claims title to  
22 any firearm, ammunition feeding device, or ammunition that is in the custody or control  
23 of a court or law enforcement agency and who wishes to have the firearm, ammunition  
24 feeding device, or ammunition returned shall make application for a determination by the  
25 Department of Justice as to whether the applicant is eligible to possess a firearm,  
26 ammunition feeding device, or ammunition." Subsections (1) through (6) to subsection  
27 (a) specifies the information the firearm owner must provide. Once the Department of  
28 Justice receives the completed application and determines the firearm owner is entitled  
to the firearm, the Department provides the owner with "written notification" stating she  
is lawfully entitled to the firearms, an authorization the owner then presents to agency to  
reclaim her firearm. Cal. Pen. Code § 33865.

1 Second, defendants knew that Ms. Cardinale was the firearms' owner. PUMF 19,  
2 63; Cal. Evid. Code § 637 ("The things which a person possesses are presumed to be  
3 owned by him."); § 638 ("A person who exercises acts of ownership over property is  
4 presumed to be the owner of it."). Defendants also knew that with the exception of the  
5 Smith & Wesson revolver Stucky took on December 25, 2019, none of the firearms were  
6 evidence of any crime, and none constituted contraband. PUMF 3, 69. And as to the  
7 Smith & Wesson revolver, defendants knew its relevance for the criminal charge of  
8 violating Cal. Pen. Code § 29800(a)(1) (felon in possession of a firearm) ended February  
9 26, 2020. PUMF 64.

10 Because the plain text of the Second Amendment guaranteed Ms. Cardinale her  
11 constitutional right to possess in her home the seven firearms, *District of Columbia v.  
12 Heller*, 554 U.S. at 592-95; *McDonald v. City of Chicago*, 561 U.S. at 778, it is  
13 defendants' burden to justify their refusal to return to Ms. Cardinale her firearms:

14 When the Second Amendment's plain text covers an individual's conduct,  
15 the Constitution presumptively protects that conduct. The government must  
16 then justify its regulation by demonstrating that it is consistent with the  
17 Nation's historical tradition of firearm regulation. Only then may a court  
18 conclude that the individual's conduct falls outside the Second  
19 Amendment's "unqualified command." *Konigsberg*, 366 U. S., at 50, n. 10.  
20 *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S.Ct. 2111, 2129-30 (2022).

21 Defendants cannot carry that burden. Historically, background investigation for  
22 firearm possession are triggered by either a person's decision to acquire a firearm, or  
23 there is a reason to believe a person should not be allowed to acquire or possess a firearm.  
24 In both instances there is a legitimate reason for the investigation – is the person  
25 competent and fit to possess a firearm? In the present case, neither reason existed as the  
26 demanded §§ 33850 *et seq.* investigation was triggered solely by **defendants'**  
27 unconstitutional seizure and retention of firearms Plaintiff lawfully acquired and lawfully  
28 possessed *in her home*. That is, defendants knew Ms. Cardinale was the firearms' lawful

1 owner and was lawfully entitled to possess all of them, firearms defendants had either  
2 wrongfully seized (the rifles seized December 25 and the two handguns seized December  
3 26) and were wrongfully withholding. *See also Frein v. Pennsylvania State Police*, 47  
4 F.4th 247, 253-56 (3<sup>rd</sup> Cir. 2022) (Applying *Bruen*'s analytical framework, Third Circuit  
5 holds that defendants' ongoing refusal to return to plaintiffs their firearms the police took  
6 from plaintiffs' home violated the Second Amendment since the police admitted plaintiffs  
7 lawfully possessed the firearms, and admitted the firearms were not contraband nor  
8 evidence of crime.); *Snitko v. United States*, 2021 WL 3139706 @ \*2 (C.D. Cal. 2021)  
9 (Pursuant to a warrant the government seized cash belonging to the plaintiff but later  
10 admitted that the cash was not contraband or implicated in criminal activity. Relying on  
11 *Brewster v. Beck*, district court holds that "the Fourth Amendment [was] implicated by  
12 the Government's delay in returning seized property, irrespective of the Government's  
13 initial basis for seizing the property," and ordered that the government return the cash to  
14 its owner.).

15 **VI. The Entity Defendants Are Liable For The Constitutional Violations.**

16 "A local government entity is liable under § 1983 when 'action pursuant to official  
17 municipal policy of some nature cause[s] a constitutional tort.' " *Lee v. City of Los  
18 Angeles*, 250 F.3d 668, 681 (9th Cir. 2001) (quoting *Oviatt v. Pearce*, 954 F.2d 1470,  
19 1473-74 (9th Cir.1992) and citing *Monell v. New York Dept. Of Soc. Servs.*, 436 U.S. 658  
20 (1978)). Consequently, the "policy 'need only cause (the) constitutional violation; it need  
21 not be unconstitutional *per se*.' " *Chew v. Gates*, 27 F.3d 1432, 1444 & n.12 (9th Cir.  
22 1994) (quoting *Jackson v. Gates*, 975 F.2d 648, 654 (9th Cir.1992)).

23 Here, defendants admit all conduct concerning this case – seizing Ms. Cardinale's  
24 long guns for safekeeping; the preparation, procurement and execution of the overbroad  
25 search warrant and affidavit; the seizure of Ms. Cardinale's handguns; and the refusal to  
26 return Ms. Cardinale's firearms until June 2021 – has been pursuant to the policy, custom,  
27 practices and training of the Sacramento County Sheriff's Department. PUMF Nos. 72-  
28 87. Thus, the municipal defendants' § 1983 liability has been established as a matter of

1 law. *Fairley v. Luman*, 281 F.3d 913, 918 (9<sup>th</sup> Cir. 2002).

2 **VII. Defendants Are Liable For All Damages Proximately Caused By Their**  
3 **Constitutional Violations.**

4 In *Bravo v. City of Santa Maria*, 665 F.3d 1076, 1089 (9th Cir. 2011), the Ninth  
5 Circuit held that traditional tort principles in holding the § 1983 defendants liable for  
6 injuries proximately caused by the execution of a search warrant: “Defendants are liable  
7 for any constitutional injuries the Bravos may have suffered as a ‘natural consequence()’  
8 of the judicial deception.” “ ‘If the actor knows that the consequences are certain, or  
9 substantially certain, to result from his act, and still goes ahead, he is treated by the law  
10 as if he had in fact desired to produce the result.’ ” (*quoting with approval* RESTATEMENT  
11 (SECOND) OF TORTS)).

12 **VIII. Conclusion.**

13 For the foregoing reasons the Plaintiff’s motion should be granted.

14 DATED: June 2, 2023

15 **DONALD W. COOK**  
16 Attorney for Plaintiff

17 By   
18 Donald W. Cook

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